

REMARKS

In the March 1, 2006 Office Action restriction was required between the following species:

Species A: Figs. 1-3;

Species B: Fig. 6;

Species C: Fig. 7;

Species D: Figs. 8-9;

Species E: Fig. 10.

Applicants hereby elect Species D for further prosecution. Applicants submit that claims 1, 2 and 7 are readable thereon, and make this election with traverse.

As set forth in the Manual of Patent Examining Procedure (MPEP) §803, there are two criteria for a proper requirement for restriction between patentably distinct inventions: (1) the inventions must be independent or distinct as claimed; and (2) there must be a serious burden on the Examiner if restriction is not required. MPEP §802.02 provides that there are three ways in which an Examiner can establish that a serious burden exists. First, the Examiner can show that each invention has attained recognition in the art as a separate subject for inventive effort, and also a separate field of search. Patents need not be cited to show separate classification. Next, even if they are classified together, each invention can be shown to have formed a separate subject for inventive effort when the Examiner can show a recognition of separate inventive effort by inventors. Finally, where it is necessary to search for one of the inventions in a manner that is not likely to result in finding art pertinent to the other inventions (e.g., searching different classes/subclasses or electronic resources, or employing different search queries), a different field of search is shown, even though the two are classified together.

Moreover, pursuant to MPEP §811, if a restriction requirement is issued after an Office Action on the merits, as in this case, consideration must be given as to whether there will in fact be a serious burden on an Examiner if restriction is not required. Although a restriction requirement may be made at any time before a final action, MPEP §811 also provides that a restriction after a first office action on the merits is proper only if the need for proper restriction requirement develops and, before making a restriction requirement after the first action on the

merits, the Examiner must consider whether there will be a serious burden if restriction is required.

In the present situation, the record amply demonstrates that no serious burden exists in maintaining all of the pending claims in this application, nor has one developed as a result of Applicants' actions. As a review, in a first Office Action on the merits dated May 3, 2006, claims 1-7 were examined and rejected on the merits. In Applicants' Amendment of August 3, 2006, claims 1, 2, 5 and 7 were amended with clarifying language only. All claims were addressed in the Amendment. In a subsequent final Office Action on the merits dated November 3, 2006, claims 1-7 were again examined and rejected over prior art. An interview between the Examiner and Applicants' representative was conducted on February 1, 2007 and a subsequent Request for Continued Examination and Amendment were submitted in which claims 1-5 and 7 were amended. The substance of all the claims was discussed with the Examiner. As Applicants' Amendment provided only clarifying language to the independent claims, Applicants' latest Amendment (as with the first Amendment) cannot be the source of an undue burden on the examination of this application. Furthermore, Applicants' Amendment included features that were already searched by the Examiner with respect to claim 7.

Accordingly, there is no undue burden in maintaining claims 1-7 and examining the alleged foregoing Species in this application, as the prosecution history fully demonstrates. A slightly clarified claim cannot be the basis of a developed undue burden on the examination process. The Examiner's examination of claims 1-7 on two occasions demonstrates to the contrary.

In view of the foregoing, reconsideration of the Election/Restriction requirement is respectfully requested.

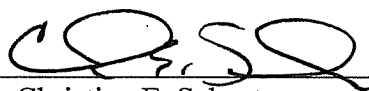
Appl. No. 10/782,644
Election With Traverse dated March 28, 2007
Reply to Restriction Requirement of March 1, 2007
Attorney Docket No. 0388-040368

Should the Examiner have any questions regarding any of the foregoing or wish to discuss this application in further detail to advance prosecution, the Examiner is invited to contact Applicants' undersigned representative at the telephone number provided below.

Respectfully submitted,

THE WEBB LAW FIRM

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